

Section 2.9

Digital Photography

Question posed at the Roundtable	<p>This document provides guidance on the following question posed at the Hearing Officer Roundtable:</p> <ul style="list-style-type: none">• What is necessary to assure the credibility of digital photographs?
Introduction	<p>Digital images, such as digital photographs, are pictures recorded by a digital camera. The images recorded by a digital camera are stored on a memory card. The images on this card can be loaded and stored on a computer to be printed-out for later use.</p>
Use of photographs in a case	<p>Photographs can document the severity and extent of damage that is caused by the negligent activity of a person or company to the personal or real property of another. Photographs are useful in cases where the property will be disposed of, repaired, evolve, or otherwise change, so that the extent and severity of the damage can no longer be subjected to the personal observation of the Hearing Officer.</p> <p>The following are minimal requirements for using photographs:</p> <ul style="list-style-type: none">• The subject, scene, or object photographed should pertain to your case;• The manner in which the photograph is taken should be as objective as possible, guarding against depicting the evidence in an unduly prejudicial or sympathetic light;• The photograph should not in any way distort the subject, scene, or object it depicts, but should represent a clear and accurate image of the facts.
Is a digital photograph acceptable as evidence?	<p>A photograph taken by a digital camera is an “original” photograph as defined by Federal Rules of Evidence. California courts have not yet addressed this issue, but in all likelihood would follow the federal rule if such a photograph were ever challenged. The basic elements used by a digital camera to create a photograph are no different than a film-based camera; both use light sensitivity controlled by an aperture and shutter speed to capture the image. The digital photograph is kept on the flash memory card on which it was recorded and the traditional photograph is kept on the negative on which it was recorded. In each case, the original imprint remains unaltered. With respect to authenticity and evidentiary value, there is no practical difference between digital and film-based photographs.</p>

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Authentication of the photograph	<p>The photograph can be authenticated when the witness (or photographer):</p> <ul style="list-style-type: none">• Is familiar with the object or scene;• Explains the basis for his/her familiarity with the object or scene;• Recognizes the object or scene in the photograph as the one he/she saw; and• Testifies that the photograph is a fair, accurate, true, or correct depiction of the object or scene at the relevant time.
Conclusion	<p>The lack of federal or state appellate court cases dealing with the admissibility of digital photographs in civil or criminal trials seems to indicate that most courts have not had any problems accepting a digital photograph as real or demonstrative evidence.</p>
Reference	<ul style="list-style-type: none">• Practical Uses of Digital Photography in Litigation, U.S. Environmental Protection Agency Attorney's Information Exchange Group, July 2000.
